

**FILED**

**JAN 18 2011**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2008-1013

**JENNA BRE MARQUEZ  
3373 Kearney Villa Lane  
San Diego, CA 92123**

**A C C U S A T I O N**

**Vocational Nurse License No. VN 233758**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about April 15, 2008, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 233758 to Jenna Bre Marquez (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

....

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

1 (c) A conviction within the meaning of this section means a plea or verdict  
2 of guilty or a conviction following a plea of nolo contendere. Any action that a  
3 board is permitted to take following the establishment of a conviction may be  
4 taken when the time for appeal has elapsed, or the judgment of conviction has been  
5 affirmed on appeal, or when an order granting probation is made suspending the  
6 imposition of sentence, irrespective of a subsequent order under the provisions of  
7 Section 1203.4 of the Penal Code.

8 (d) The Legislature hereby finds and declares that the application of this  
9 section has been made unclear by the holding in *Petropoulos v. Department of*  
10 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has  
11 placed a significant number of statutes and regulations in question, resulting in  
12 potential harm to the consumers of California from licensees who have been  
13 convicted of crimes. Therefore, the Legislature finds and declares that this section  
14 establishes an independent basis for a board to impose discipline upon a licensee,  
15 and that the amendments to this section made by Senate Bill 797 of the 2007 -08  
16 Regular Session do not constitute a change to, but rather are declaratory of,  
17 existing law.

18 8. Section 493 of the Code states:

19 Notwithstanding any other provision of law, in a proceeding conducted by a  
20 board within the department pursuant to law to deny an application for a license or  
21 to suspend or revoke a license or otherwise take disciplinary action against a  
22 person who holds a license, upon the ground that the applicant or the licensee has  
23 been convicted of a crime substantially related to the qualifications, functions, and  
24 duties of the licensee in question, the record of conviction of the crime shall be  
25 conclusive evidence of the fact that the conviction occurred, but only of that fact,  
26 and the board may inquire into the circumstances surrounding the commission of  
27 the crime in order to fix the degree of discipline or to determine if the conviction is  
28 substantially related to the qualifications, functions, and duties of the licensee in  
question.

As used in this section, "license" includes "certificate," "permit,"  
"authority," and "registration."

9. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the  
Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the  
following:

(a) Unprofessional conduct, which includes, but is not limited to, the  
following:

....

(d) Violating or attempting to violate, directly or indirectly, or assisting in  
or abetting the violating of, or conspiring to violate any provision or term of this  
chapter.

....

1 (f) Conviction of a crime substantially related to the qualifications,  
2 functions, and duties of a licensed vocational nurse, in which event the record of  
the conviction shall be conclusive evidence of the conviction.

3 . . . .

4 (j) The commission of any act involving dishonesty, when that action is  
5 related to the duties and functions of the licensee.

6 10. Section 2878.5 of the Code states:

7 In addition to other acts constituting unprofessional conduct within the  
8 meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional  
conduct for a person licensed under this chapter to do any of the following:

9 (a) Obtain or possess in violation of law, or prescribe, or except as directed  
10 by a licensed physician and surgeon, dentist or podiatrist administer to himself or  
herself or furnish or administer to another, any controlled substance as defined in  
11 Division 10 of the Health and Safety Code, or any dangerous drug as defined in  
Section 4022.

12 (b) Use any controlled substance as defined in Division 10 of the Health and  
13 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
14 beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
any other person, or the public, or to the extent that the use impairs his or her  
15 ability to conduct with safety to the public the practice authorized by his or her  
license.

16 (c) Be convicted of a criminal offense involving possession of any narcotic  
17 or dangerous drug, or the prescription, consumption, or self-administration of any  
18 of the substances described in subdivisions (a) and (b) of this section, in which  
event the record of the conviction is conclusive evidence thereof.

19  
20 11. Section 2878.6 of the Code states:

21 A plea or verdict of guilty or a conviction following a plea of nolo  
22 contendere made to a charge substantially related to the qualifications, functions  
and duties of a licensed vocational nurse is deemed to be a conviction within the  
23 meaning of this article. The board may order the license suspended or revoked, or  
may decline to issue a license, when the time for appeal has elapsed, or the  
24 judgment of conviction has been affirmed on appeal or when an order granting  
probation is made suspending the imposition of sentence, irrespective of a  
25 subsequent order under the provisions of Section 1203.4 of the Penal Code  
allowing such person to withdraw his plea of guilty and to enter a plea of not  
26 guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
information or indictment.

27 12. Health and Safety Code Section 11173 (a) provides, in pertinent part, that (a) no  
28 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the

1 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
2 or subterfuge.

### 3 REGULATIONS

4 13. California Code of Regulations, title 16, section 2521, states:

5 For the purposes of denial, suspension, or revocation of a license pursuant to  
6 Division 1.5 (commencing with Section 475) of the Business and Professions  
7 Code, a crime or act shall be considered to be substantially related to the  
8 qualifications, functions or duties of a licensed vocational nurse if to a substantial  
9 degree it evidences present or potential unfitness of a licensed vocational nurse to  
10 perform the functions authorized by his license in a manner consistent with the  
11 public health, safety, or welfare. Such crimes or acts shall include but not be  
12 limited to those involving the following:

13 (a) Procuring a license by fraud, misrepresentation, or mistake.

14 (b) A conviction of practicing medicine without a license in violation of  
15 Chapter 5 of Division 2 of the Business and Professions Code.

16 (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
17 abetting the violation of, or conspiring to violate any provision or term of Chapter  
18 6.5, Division 2 of the Business and Professions Code.

19 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
20 whether a licensed physician or not, in the performance of or arranging for a  
21 violation of any of the provisions of Article 13, Chapter 5, Division 2 of the  
22 Business and Professions Code.

23 (e) Conviction of a crime involving fiscal dishonesty.

24 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
25 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of  
26 the Business and Professions Code.

27 14. California Code of Regulations, title 16, section 2522 states:

28 When considering . . . b) the suspension or revocation of a license on the  
ground that a licensee has been convicted of a crime, . . . the Board in evaluating  
the rehabilitation of an individual and his or her present eligibility for a license,  
will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crimes under  
consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

(4) Overall disciplinary record.

1 (5) Overall criminal actions taken by any federal, state or local agency or  
2 court.

3 (6) Prior warnings on record or prior remediations.

4 (7) Number and/or variety of current violations.

5 (8) Mitigation evidence.

6 (9) In case of a criminal conviction, compliance with terms of sentence  
7 and/or court-ordered probation.

8 (10) Time passed since the act(s) or offense(s) occurred.

9 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant  
10 to Penal Code Section 1203.4.

11 (12) Cooperation with the Board and other law enforcement or regulatory  
12 agencies.

13 (13) Other rehabilitation evidence.

#### 14 COSTS

15 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

#### 19 DRUGS

20 16. Alprazolam (Xanax) is a Schedule IV controlled substance pursuant to Health and  
21 Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and Professions  
22 Code section 4022. It is used in the treatment of anxiety.

23 17. Ambien is a Schedule IV controlled substance pursuant to Health and Safety Code  
24 section 11057(d)(32) and is a dangerous drug pursuant to Business and Professions Code section  
25 4022. Ambien is the trade name for the narcotic substance Zolpidem and is a sleeping aid.

26 18. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety  
27 Code section 11055(b)(1)(J) and a dangerous drug pursuant to Business and Professions Code  
28 section 4022. It is used in the relief of pain.

19. Roxicet (Oxycodone) is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(N) and a dangerous drug pursuant to Business and Professions Code section 4022. It is used in the relief of moderate to severe pain. It can cause side effects that may impair thinking or reactions.

### FIRST CAUSE FOR DISCIPLINE

(May 13, 2009 Conviction for Reckless Driving on December 10, 2008)

20. Respondent is subject to disciplinary action under Code sections 490 and 2878(f) in that she was convicted of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as follows:

21. On or about May 13, 2009, in a criminal proceeding entitled *People of the State of California v. Jenna Bre Archibald, a.k.a. Jenna Bre Marquez*, in the San Diego Superior Court, Case No. M068621, Respondent was convicted on her plea of guilty to violating Vehicle Code section 23103.5 (reckless driving, a reduction from a driving under the influence charge), a misdemeanor.

22. On or about May 13, 2009, the imposition of sentencing was suspended and Respondent was placed on three years summary probation; ordered to complete a first conviction program and attend MADD and STAR as directed; and pay fines in the amount of \$1,121.

23. The circumstances that led to the conviction are that on or about December 10, 2008 at approximately 12:18 a.m., while Respondent was under the influence of controlled substances, she drove her vehicle on a city street and collided with a parked vehicle on the side of the street. When police questioned her regarding the accident, Respondent was confused, staggered as she walked and giggled while the police officer spoke with her. Respondent told the officer that she had trouble sleeping and took two different sleep medications, Ambien and “Simply Sleep” and was trying to race home before she fell asleep. Respondent failed the field sobriety tests that the office gave her. Respondent was arrested for driving under the influence of drugs.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Use of Drugs in a Manner Dangerous to the Public)

3 24. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on the  
4 grounds of unprofessional conduct, as defined by Code section 2878.5(b) in that she used  
5 controlled substances in a manner that was dangerous to herself and the public when she took  
6 Ambien and other sleep aids, drove her car and caused an accident. The circumstances are set  
7 forth more specifically in paragraph 23 above and incorporated herein as though fully set forth.

8 THIRD CAUSE FOR DISCIPLINE

9 (Conviction Involving the Self-Administration of a Controlled Substance)

10 25. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on the  
11 grounds of unprofessional conduct as defined by Code section 2878.5(c), in that Respondent was  
12 convicted of a criminal offense involving the self-administration of a controlled substance. The  
13 circumstances are more specifically set forth in paragraph 23 above and incorporated herein as  
14 though fully set forth.

15 FOURTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct: Obtaining Controlled Substances in Violation of Law)

17 26. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on  
18 the grounds of unprofessional conduct, as defined by Code section 2878.5(a) in that she obtained  
19 controlled substances in violation of the law when she obtained dangerous drugs and controlled  
20 substances by fraud, deceit, misrepresentation, and the concealment of material facts. The  
21 circumstances are as follows:

22 a. Between or about July 3, 2008 and November 5, 2008, Respondent engaged in  
23 fraud to obtain controlled substances from numerous physicians without each knowing about  
24 prescriptions written by the others.

25 b. During this time period, Respondent obtained at least 51 prescriptions from 10  
26 different physicians.

27 c. Respondent's drugs of choice throughout this time period were Hydrocodone.  
28 Oxycodone, Xanax and Ambien.



1 d. Respondent's method for obtaining these prescriptions was that she sought  
2 treatment at several different medical facilities (Sharp Grossmont Hospital, Sharp Memorial  
3 Hospital, Sharp Rees-Stealy Occupational Medical Group, Sharp Rees-Stealy Medical Group and  
4 University of California Medical Center), many within just a few days of one another, with some  
5 facilities located a considerable distance from her home. She told the different treating doctors  
6 that she had either migraine headaches or shoulder pain and needed pain medication. She also  
7 said she had trouble sleeping due to the pain. Respondent admitted to a Board investigator that  
8 she did not tell these doctors that she was receiving pain and sleep medications from other  
9 doctors.

10 e. During the four month period from July 3, 2008 until November 5, 2008,  
11 Respondent obtained in excess of 1924 tablets of Hydrocodone, Oxycodone, Xanax and Ambien.

#### 12 FIFTH CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct: Commission of Any Act Involving Dishonesty)

14 27. Respondent is subject to disciplinary action under Code section 2878(j) on the  
15 grounds of unprofessional conduct in that, between the time period July 3, 2008 through  
16 November 5, 2008, Respondent was dishonest and lied to her doctors in order to get multiple  
17 prescriptions for controlled substances written for her, even though she already had prescriptions  
18 for those medications. Respondent failed to inform the doctors that she was already receiving  
19 prescriptions for pain and sleep medications from other doctors.

#### 20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
23 issue a decision:

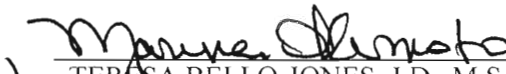
24 1. Revoking or suspending Vocational Nurse License Number VN 233758 issued to  
25 Jenna Bre Marquez;

26 2. Ordering Jenna Bre Marquez to pay the Board of Vocational Nursing and Psychiatric  
27 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to  
28 Business and Professions Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: January 13, 2011

  
TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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